

**R E M A R K S**

In the previous Response to Office Action of September 17, 2002, Applicant canceled Claims 1-21, and entered new Claims 22-41. In the instant Final Office Action, the Examiner has raised several rejections:

- 1) Claims 22-24 stand rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement;
- 2) Claims 22-41 stand rejected under 35 U.S.C. §103(a), as allegedly unpatentable over Tao (U.S. Patent No. 6,284,007); and
- 3) Claims 22, 23, 27, 30, 32, 35 and 38 stand rejected under 35 U.S.C. §102(b), as allegedly anticipated by Calzada (U.S. Patent No. 6,063,144).

Applicant hereby amends Claims 22, 27, 32, 36- 40, and cancels Claims 23, 24, and 28, in order to further the prosecution of the present application and Applicant's business interests, yet without acquiescing to the Examiner's arguments. Applicant reserves the right to prosecute the original, similar, or broader claims in one or more future application(s). These amendments do not introduce new matter and are not intended to narrow the scope of any of the claims within the meaning of *Festo*.<sup>1</sup>

**1) The Claims Meet the Written Description Requirement**

The Examiner has rejected Claims 22-24 under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Examiner states:

"[t]here is no support in the original filed specification for a candle composition that is 'substantially free of any petroleum waxes' (claim 22) or a 'paraffin-free candle' (claims 32 and 39)" (Office Action, page 2).

Applicant must respectfully disagree. Nonetheless, Applicant has amended Claims 22, 32 and 39, in order to further the prosecution of the present application and Applicant's business interests, yet without acquiescing to the Examiner's arguments, and while reserving the right to prosecute the original, similar, or broader claims in one or more future application(s). In particular, Applicant has removed the recitation "substantially free of any petroleum waxes"

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<sup>1</sup> *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 122 S.Ct. 1831, 1838, 62 USPQ2d 1705, 1710 (2002).

from Claim 22, and has removed the recitation "paraffin-free" from Claims 32 and 39. Applicant respectfully requests that this rejection be withdrawn.

**2) The Claims Are Unobvious in View of Tao**

The Examiner has rejected Claims 22-41 under 35 U.S.C. §103(a), as allegedly unpatentable over Tao (U.S. Patent No. 6,284,007). The Examiner states:

"Tao teaches a vegetable lipid-based composition and candle comprising fully hydrogenated triglycerides and free fatty acids (see col. 1, lines 60-67). The triglycerides and free fatty acids are obtained from plant sources (see col. 2, lines 51-55) and are preferably saturated (see col. 3, lines 1-2). The free fatty acid triglyceride mixture contains from 1-99% triglyceride and from 1 to 99% free fatty acid (see Example 5). Tao teaches the limitations of the claims other than the difference that is discussed below.

Tao differs from the claims in that he does not specifically teach the claimed iodine value. However, it would be reasonable to expect that the triglycerides and fatty acids of Tao would possess the claimed iodine value because Tao teaches that the triglycerides are fully hydrogenated and that he prefers triglycerides and free fatty acids that are saturated" (Office Action, pages 3 and 4).

Applicant must respectfully disagree. Nonetheless, Applicant has amended Claims 22, 27, 32, 36-40, in order to further the prosecution of the present application and Applicant's business interests, yet without acquiescing to the Examiner's arguments, and while reserving the right to prosecute the original, similar, or broader Claims in one or more future application(s).

Specifically, Applicant has amended Claim 22, 36, 38, to recite "non-plant source free fatty acid." In addition, Claim 27 has been amended to recite "said free fatty acid is selected from the group consisting of an animal free fatty acid and a petroleum free fatty acid." Support for this amendment is found in the Description which discloses "the FFA may be obtained from animal (*e.g.*, tallow), petroleum or other non-plant sources; additionally the TGs may be obtained from non-plant sources as well" (Specification, at page 8, lines 10-13). Furthermore, Claim 39 has been amended to recite "wherein said hydrogenated triglycerides are derived from an oil selected from the group consisting of rapeseed oil, olive oil, peanut oil, perilla oil, linseed oil, candlenut oil, rubberseed oil, safflower oil, poppy oil, walnut oil, tobacco oil, niger oil, sesame oil, meadowfoam oil, kukui nut oil, macadamia nut oil, coconut oil and cocoa oil." As detailed in the remarks of Section 3 below, support for this amendment is also contained in the Specification as filed. In contrast, Tao teaches "[t]he

triglycerides and free fatty acids are obtained preferably from *plant sources, including soybean, cottonseed, corn sunflower, canola and palm oils*" ('007, at column 2, lines 51-53, emphasis added). Thus, the "non-plant source" limitation of Claims 22-31, 36, and 38 distinguishes the claimed invention from Tao with respect to the free fatty acid component, while the oil limitation of Claim 39-41, distinguishes the claimed invention from Tao with respect to the triglyceride component.

In addition, Applicant has amended Claims 22, 32, 37, 39, and 40 to recite iodine values of less than 5, 1, 0.5, 5, and 3, respectively. Support for this amendment can be found in the Summary which discloses "[o]ther embodiments include a similarly composed candle having an iodine value of 7.5, 5, 3, 1, or 0.5 or less" (Specification, at page 3, lines 26 and 27). Applicant disagrees with the Examiner's assertion that "it would be reasonable to expect that the triglycerides and fatty acids of Tao would possess the claimed iodine value" (Office Action, page 3). Applicant respectfully reminds the Examiner that the an iodine value less than 5 is not an inherent property of a composition comprising a fully hydrogenated triglyceride and a saturated free fatty acid. The final iodine value of a fatty material is dependent upon the method employed for hydrogenation and the physical properties of the substrate and catalyst. As evidenced by the Declaration of Jerry Bertrand, the iodine value of a fully hydrogenated fatty material varies based upon the catalyst employed, the purity of the fatty material, and on the temperature of the reaction (attached herein at Tab 1).

In addition, Tao teaches the acceptability of using *mono-, di-, and tri-unsaturated fatty acid components* ranging from 0.28 to 72.82 percent by weight of the vegetable lipid-based compositions ('007, Table 1). Equally important, Applicants disclosed that "[l]ower IVs are typically achieved with increased substrate processing time and costs (i.e., more comprehensive hydrogenation processing). Thus, a candle with IV of 14-10 may have a cost that is less than that of a candle having an IV of 7.5 or 5 or less" (Specification, page 23, at lines 12-15). Thus, it is reasonable to expect that the candle compositions of Tao would possess an IV greater than 5. As the claimed invention differs from Tao with respect to free fatty acid source, triglyceride source and iodine value, Applicant respectfully requests that this rejection be withdrawn.

**3) The Claims Are Novel Over Calzada**

The Examiner has rejected Claims 22, 23, 27, 30, 32, 35 and 38 under 35 U.S.C. §102(b), as allegedly anticipated by Calzada (U.S. Patent No. 6,063,144). The Examiner states:

"Calzada teaches a non-paraffin candle composition comprising plant source stearic acid and hydrogenated vegetable wax (hydrogenated castor oil) (see col. 2, lines 9-28; col. 3, lines 12-15). Calzada desires a stearic acid and vegetable wax that have an iodine number no greater than 7 (see col. 2, lines 51-53 and col. 3, lines 9-12). Accordingly, Calzada teaching all material limitations of the claims anticipates the claims.

Applicant argues that Calzada does not teach or suggest that the candle composition as a whole has an IV of less than 10. Applicant argues that Calzada does not take into consideration the other components that may be present in the candle composition.

Calzada teaches that the stearic acid and vegetable wax each have an IV of no greater than 7. In example 2, Calzada exemplifies a candle composition containing stearic acid, hydrogenated castor oil, fragrance and an oxidation inhibitor. There is nothing in this composition that would raise the IV of the composition to greater than 7. Furthermore, as shown in this example, the vegetable oils are optional and would not increase the IV of the composition as a whole" (Office Action, pages 4 and 5).

Applicant respectfully disagrees with this rejection. Nonetheless, Applicant has amended Claims 22, 32 and 39, and has canceled Claims 23, 24, and 28, in order to further the prosecution of the present application and Applicant's business interests, yet without acquiescing to the Examiner's arguments, and while reserving the right to prosecute the original, similar, or broader Claims in one or more future application(s). In particular, Applicant has amended Claims 22 and 39 to recite "an iodine value of less than 5," and Claim 32 to recite "an iodine value less than 1." In addition, Claim 39 has been amended to recite "wherein said hydrogenated triglycerides are derived from an oil selected from the group consisting of rapeseed oil, olive oil, peanut oil, perilla oil, linseed oil, candlenut oil, rubberseed oil, safflower oil, poppy oil, walnut oil, tobacco oil, niger oil, sesame oil, meadowfoam oil, kukui nut oil, macadamia nut oil, coconut oil and cocoa oil." Support for these amendments can be found in the original claims as filed and in the Description which teaches "the TGs and/or FFAs of the present invention may be derived from the oil of rapeseed, . . . olive, peanut, perilla, linseed, candlenut rubberseed, safflower, poppy, walnut,

tobacco, niger, . . . sesame, meadowfoam, kukui nut, macadamia nut, coconut and cocoa amongst other seeds and/or nuts" (Specification, at page 8, lines 4-9).

In contrast, Calzada teaches that both the free fatty acid and the triglyceride wax have an *iodine value of no greater than 7* ('144, at column 2, lines 51-53; and at column 3, lines 9-12). Moreover, Calzada teaches that:

"[v]egetable oils when present in the composition of the invention are preferably liquid at a temperature from 0° C. to 30° C. and can contain triglycerides of saturated and unsaturated fatty acids. The *iodine number of such vegetable oils is preferably in the range of 15 to 150. Suitable vegetable oils include corn oil, cottonseed oil, deodorized coconut oil, palm oil, soybean oil, and sunflower oil*" ('144, at column 3, lines 19-25, emphasis added).

As the claimed invention differs from Calzada with respect to both iodine value and triglyceride source, Applicant respectfully requests that this rejection be withdrawn.

#### **Conclusion**

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. However, should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicant encourages the Examiner to call the undersigned collect.

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